

## JONES DAY

250 VESEY STREET • NEW YORK, NEW YORK 10281.1047

TELEPHONE: +1.212.326.3939 • JONESDAY.COM

DIRECT NUMBER: 2123263893

SYOTHERS@JONESDAY.COM

September 11, 2023

CM/ECF

Hon. Judith C. McCarthy  
United States Magistrate Judge  
300 Quarropas Street, Room 421  
White Plains, NY 10601-4150

Re: *Hayden v. International Business Machines Corp., et al.*, No. 7:21-cv-02485-VLB-JCM

Dear Judge McCarthy:

Defendants write regarding the 28 Topics in Plaintiff's August 31, 2023 Amended 30(b)(6) Notice (Ex. A) and Defendants' objections that Plaintiff filed with the Court hours after they were served. Dkt. 156-3. The Parties conferred on Friday and Plaintiff suggested deferring some Topics while he seeks additional documents. Ex. B. Defendants now respectfully request that the Court enter a protective order prohibiting the improper deposition Topics, which largely mimic the fishing expedition Plaintiff sought with his document requests. *See, e.g.*, Topics 25 and 26.

Deposition topics must be (1) proportional; (2) not unduly burdensome; and (3) described with "reasonable particularity." *Blackrock Allocation Target Shares: Series S Portfolio v. Wells Fargo Bank, Nat'l Ass'n*, 2017 WL 9400671, at \*1 (S.D.N.Y. Apr. 27, 2017) (citations omitted). Noticed topics must be described with "painstaking specificity" to meet this requirement. *See id.*; *see also Winfield v. City of New York*, 2018 WL 840085, at \*5 (S.D.N.Y. Feb. 12, 2018). "Courts [] scrutinize Rule 30(b)(6) notice topics" for these requirements "to ensure that the responding party can select and prepare the most suitable witness and so that the topics do not engender abuse of the process by either party." *Blackrock*, 2017 WL 9400671, at \*2.

Hon. Judith C. McCarthy  
September 11, 2023  
Page 2

The Topics, served only 36 days before fact discovery ends, do not meet this Court’s standard. *See id.* at \*1–2. The Topics disregard this Court’s prior rulings on the scope of discovery and also are overbroad, difficult to decipher, and in many instances irrelevant. *See Sanofi-Synthelabo v. Apotex Inc.*, 2009 WL 5247497, at \*2 (S.D.N.Y. Dec. 30, 2009) (granting protective order as to irrelevant topics); *compare Winfield*, 2018 WL 840085, at \*5 (“topics should not be listed as ‘including but not limited to;’[] they must be explicit[]”) *with* Ex. A, Topics 2, 3, 7–11, 14; *compare* Dkt. 74 at 39:21–40:10 (noting unclear why [] information about Red Hat, OpenShift, or Cloud Pak would be relevant and denying Plaintiff’s requests) *with* Ex. A, Topics 9, 17.

Plaintiff seeks corporate testimony on many irrelevant and non-specific subjects, including, for example: (i) “Development, Features and Functions, and modifications, Marketing, Costs, Revenues, and Royalties” for groups of products or services (Topics 7–11, 14); (ii) any “partnerships, products developed with and revenues” derived from any work, regardless of relevance, with ten companies (Topic 25); and (iii) any “features and functions of any products/solutions offered and/or sold to” 20 different financial institutions, regardless of relevance (Topic 26). The Topics are as broad in time and scope as the many document requests that have been previously denied by the Court. *See Winfield*, 2018 WL 840085, at \*5 (“topics should be substantively and temporally relevant to the claims or defenses”). A 30(b)(6) deposition is not a fishing expedition. It must be reasonably particular after other discovery tools have been used to focus the case. For the reasons set forth herein and as further summarized in Exhibit C, Defendants request that the Court enter a protective order prohibiting Plaintiff’s improper requests.

JONES DAY

Hon. Judith C. McCarthy  
September 11, 2023  
Page 3

Respectfully submitted,

*/s/ Stuart W. Yothers*

Stuart W. Yothers

cc: All counsel of record (via CM/ECF)